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### **SUBPART 5309.1—RESPONSIBLE PROSPECTIVE CONTRACTORS**

#### **5309.103 Policy.**

(a) The contracting officer shall forward requests for USD(A&T) approval to deny contract or subcontract awards solely or in part because of the presence of Soviet inspectors at the contractors' facilities through the MAJCOM to arrive at SAF/AQCS at least 30 days before USD(A&T) approval is required. The request must include:

- (1) Nature of the request—Request USD(A&T) approval to deny a contract or subcontract award solely or in part because of the presence of Soviet inspectors at a contractor's facility;
- (2) Acquisition background and objectives—Provide a brief description of the acquisition, pertinent history leading to this contract, and significant program events ahead. Also include the planned contract award date and impact if USD(A&T) approval is not provided in time to support the planned contract award date; and
- (3) Facility affected/rationale—Identify the contractor facility affected and provide rationale for denying contract award. Explain the decision not to consider a defense contractor facility for a contract solely or in part because of the presence of Soviet inspectors at that facility.

#### **5309.106 Preaward surveys.**

##### **5309.106-90 Requests for base level preaward surveys.**

(a) When there may be some question about the ability of the prospective contractor to perform base level service and construction contracts, appropriate technical personnel from the concerned installation should participate in the preaward survey. Areas of interest might include performance plans, quality controls, personnel recruitment and training, workload factors for manpower utilization, handling of peak workloads, handling or providing equipment and any other area having a significant bearing on the contractor's ability to perform.

(b) Particular care must be exercised in situations where the low responsive bidder has bid a price significantly below other bidders or the Government estimate. Before determining that such a bidder is responsible, the contracting officer must make an affirmative determination that the bidder can sustain the estimated loss, if any, and still be able to perform the contract requirements.

### **SUBPART 5309.2—QUALIFICATION REQUIREMENTS**

#### **5309.202 Policy.**

(a)(1) The HCA responsible for establishing the qualification requirement shall be the "designee" referenced in FAR 9.202 (a)(1). The HCA may redelegate the authority to establish qualification requirements. The Air Force standardization offices or focal points listed in the DOD Standardization Directory (SD-1) shall establish the justification for inclusion of qualification requirements in specifications for products which are to be included on a QPL. Forward such justification through the respective Command Standardization Offices, if applicable, to the Air Force Departmental Standardization Office for approval.

(b) For purposes of FAR 9.202 (b), the term "procuring activity" includes those activities identified in 5306.304-90 (b).

(e) The "designee" referenced in FAR 9.202 (e) is the HCA, with power of redelegation.

#### **5309.206 Acquisitions subject to qualification requirements.**

##### **5309.206-1 General.**

(b) The designee referenced in FAR 9.206-1 (b) is the HCA, with power of redelegation.

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(e)(3) When a decision is made not to enforce a qualification requirement, the contracting officer shall request concurrence from the agency activity that established the qualification requirement. The request shall contain complete justification for waiving the qualification requirement. When products have been approved for inclusion on a QPL, forward an information copy of each approved request to the Air Force Departmental Standardization Office and to the appropriate Command Standardization Office, if applicable, listed in the DOD Standardization Directory (SD-1).

**5309.207 Changes in status regarding qualification requirements.**

(b) Notify the local Competition Advocate, whenever a source is removed from a QPL, QML, or QBL. If the source is a small business, notify the local Small Business Utilization Office.

**SUBPART 5309.4—DEBARMENT, SUSPENSION, AND INELIGIBILITY****5309.401 Applicability.**

Air Force non-appropriated fund activities and activities responsible for non-procurement actions (e.g., grants, cooperative agreements, scholarships, fellowships, loans, loan guarantees, and subsidies) shall also process debarment and suspension recommendations in accordance with this subpart.

**5309.404 List of Parties Excluded from Federal Procurement and Nonprocurement Programs.**

Each Air Force contracting activity shall obtain and have available the most recent edition of the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs.

**5309.405 Effect of listing.**

Within the Air Force, the Assistant Secretary of the Air Force (Acquisition) is authorized to make determinations concerning compelling reason exceptions. The contracting officer shall submit a request for an exception to the MAJCOM Director of Contracting. The request must contain complete and detailed information, including as a minimum a description of efforts taken to establish alternate sources and the impact failure to grant the exception would have on the Government. The MAJCOM Director of Contracting shall submit the request, under the signature of a general officer, to SAF/AQCX, with a copy to the Assistant General Counsel for Contractor Responsibility (SAF/GCR), for processing to the approval authority. SAF/AQCX shall forward approved exceptions to GSA.

**5309.406-3 Procedures.**

(a)(i) The contracting officer shall also prepare a report when a nonresponsibility determination is based on the offeror's lack of integrity or business honesty (see FAR 9.105-2).

**5309.406-3-90 Air Force procedures.**

(a) *Assignment of responsibilities.* SAF/GCR reviews all recommendations regarding potential debarments or suspension. Contracting activities shall submit reports required in DFARS 209.406-3 directly to SAF/GCR.

(1) When the recommendation for debarment or suspension is based upon a conviction, indictment, or a civil judgment, the servicing judge advocate for the cognizant contracting activity is responsible for ensuring that the report is submitted to SAF/GCR. The report should be submitted to arrive at SAF/GCR within ten days after receipt of the information on which the recommendation is based.

(2) If suspension before completion of a criminal investigation is in the best interest of the Government, or if prosecution is not anticipated or has been declined by the Department of Justice, the servicing judge advocate for the cognizant contracting activity is responsible for ensuring that the report is submitted to SAF/GCR within 30 days after receipt of the information on which the recommendation is based.

(3) The servicing staff judge advocate shall notify the contracting officer of any indictment, civil judgment, conviction, or declination of prosecution and shall ensure that recommendation submittals meet the time goals in (1) and (2) above.

(4) When the recommendation for debarment or suspension is based on performance factors (see FAR 9.406-2 (b)) or other causes (see FAR 9.406-2 (c) and FAR 9.407-2 (c)), the responsibility for ensuring that action is taken rests with the

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cognizant contracting officer. Such recommendations shall be submitted to arrive at SAF/GCR within 30 days after the contracting activity receives information giving rise to the decision to recommend the action.

(5) Except for AFMC, whenever a report and recommendation to suspend or debar a contractor is made and forwarded to SAF/GCR, a copy of the report and recommendation shall be forwarded to the MAJCOM Judge Advocate and Chief of Contracting for review, comment, and recommendation. MAJCOM comments and recommendations shall be sent to SAF/GCR and arrive not later than 30 days after the date of the contracting officer's report. MAJCOM/JA shall be responsible for coordinating MAJCOM actions. AFMC reports and recommendations shall be coordinated in accordance with AFMC procedures.

(b) *Required documentation.* All reports accompanying recommendations for debarment or suspension must be prepared in accordance with DFARS 209.406-3 and contain sufficient evidence to support the action. Specific responsibilities are as follows:

(1) In all instances where the recommended action is based upon an indictment, conviction, or civil judgment, a copy of the relevant document shall be attached as a part of the report;

(2) If the recommendation is not based on an indictment, conviction, or civil judgment, the staff judge advocate shall ensure that each allegation is accompanied by a statement of facts. The statement of facts shall explain what was required of the contractor, the contractor's actions that failed to comply with the requirement, and how the contractor's actions affected contract performance. Evidence supporting the facts shall include copies of:

- (i) Pertinent contract requirements such as clauses, specifications, work statements, and test procedures;
- (ii) Documents provided by the contractor such as certificates, altered or substitute reports, and invoices;
- (iii) Correspondence between the Government and the contractor;
- (iv) Investigative reports such as AFOSI and DCIS reports; and
- (v) Other documents such as signed statements by persons with first hand knowledge of the facts and affidavits filed in support of a search warrant or civil or criminal pleadings.

(3) The staff judge advocate shall ensure that the report includes copies of commercial credit reports or other reports that identify corporate officers, affiliates, and subsidiaries, when available;

(4) If the recommendation includes an investigative report, the staff judge advocate shall identify the extracts that shall be used as evidence, obtain approval of the investigative organization to use or release the information and obtain any additional evidence needed to support the investigative findings;

(5) All recommendations shall include a legal analysis that addresses the sufficiency, probative utility, and releasability of the evidence; and

(6) If the debarring official determines that a hearing is needed to resolve a genuine dispute over material facts:

- (i) The Office of the Judge Advocate General (HQ USAF/JA) shall designate a JAG officer or attorney-advisor, who shall be responsible for the presentation and management of the case for the Government.
- (ii) The contracting activity and the MAJCOM shall provide witnesses and other support needed by the designated JAG officer or attorney-advisor presenting the Government's case.

(c) *Coordinations.*

(1) The staff judge advocate and investigators shall coordinate with the cognizant United States Attorney's office to determine the availability of documentation and information to support recommendations for debarment or suspension. A summary of this coordination shall be included with the legal analysis.

(2) In situations where a U.S. Attorney requests the action be held in abeyance, a recommendation to debar or suspend should not be delayed if there is sufficient evidence to initiate such action in order to protect the Government's interest. The report shall indicate any such request or declination by a U.S. Attorney.

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**5309.407 Suspension.****5309.407-3 Procedures.**

(a) *Investigation and referral.* SAF/GCR may take action to suspend a contractor prior to receipt of a formal report as required in DFARS 209.406-3 (a) if immediate action is in the best interest of the Government. When such action is taken, SAF/GCR shall advise the staff judge advocate of the cognizant contracting activity and request preparation of the report in accordance with 5309.406-3-90.

**5309.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.**

If an offeror indicates pursuant to FAR 52.209-5 (a)(1) an indictment, charge, conviction, or civil judgment, the contracting officer shall review the latest GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs. If the offeror is not listed, the contracting officer should contact SAF/GCR by telephone to determine if debarment or suspension has been initiated. If these proceedings are not already underway, the contracting officer should submit a report to SAF/GCR in accordance with DFARS 209.406-3.

**SUBPART 5309.5—ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST****5309.503 Waiver.**

The designee for waiving FAR Subpart 9.5 requirements is SAF/AQ. Submit waiver requests through command contracting channels to SAF/AQCS.